



**PROPOSED RULE MAKING
(RCW 34.05.320)**

**CR-102 (7/10/97)
Do NOT use for expedited
adoption**

Agency: **Department of Agriculture**

- ☒ Preproposal Statement of Inquiry was filed as WSR 01-17-118; or
☐ Expedited Adoption -- Proposed Rule Making notice was filed as WSR ____; or
☐ Proposal is exempt under RCW 34.05.310(4).

- ☒ Original Notice
☐ Supplemental Notice
to WSR ____
☐ Continuance of WSR ____

(a) Title of rule: (Describe Subject) **Secondary and Operational Area Containment for Bulk Pesticides WAC 16-229-010 through WAC 16-229-480**

Purpose: The current 2,500-gallon tank size restriction results in a substantial increase in the number of times the product (soil fumigant) is transferred, increasing the risk of accidental spills. Changing the rule to allow larger temporary field storage tanks of (10,000 gallons) will reduce the number of required deliveries and, consequently, the number of road miles in which accidental spills of the soil fumigants may occur. Fewer deliveries will also reduce the number of times the product is transferred which will substantially reduce the potential for accidental spills.

Other identifying information:

(b) Statutory authority for adoption: RCW 15.58.040 and RCW 17.21.030 and RCW 34.05

Statute being implemented: RCW 15.58.020, RCW 15.58.040(2)(e) and RCW 17.21.030(1)(a)

Summary: See attached.

Reasons supporting proposal: There are already numerous 10,000 gallon temporary field storage tanks being used to store soil fumigants resulting in non-compliance with a rule that, from a storage standpoint, is technologically outdated. Growers, applicators, transporters of soil fumigants will all be positively impacted by the proposed rules.

(d) Name of Agency Personnel Responsible for:	Office Location	Telephone
1. Drafting..... Cliff Weed	Natural Resources Building	360-902-2036
2. Implementation.... Cliff Weed	1111 Washington Street	360-902-2036
3. Enforcement..... Cliff Weed	Department of Agriculture 2 nd floor Olympia, WA. 98504-2589	360-902-2036

(e) Name of proponent (person or organization): Washington State Department of Agriculture

☐ Private
☐ Public
☒ Governmental

(f) Agency comments or recommendations, if any, as to statutory language, implementation, enforcement and fiscal matters:

(g) Is rule necessary because of:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	If yes, ATTACH COPY OF TEXT Citation:
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	

(h) HEARING LOCATION:

Three DIS locations simultaneously via teleconference:

710 Sleater Kinney Rd SE, Ste. Q, Lacey, WA 98504
8551 W Gage Blvd, Ste. H, Kennewick, WA 99336
1101 N Argonne, Ste. 109, Spokane, WA 99201

Date: 3/25/03 Time: 6:00 pm

Assistance for persons with disabilities: Contact
Laurie Mauerman by 3/10/03

TDD (360) 902-1996 or (____) ____

NAME (TYPE OR PRINT) Bob Arrington

SIGNATURE

TITLE Assistant Director

DATE: 2/18/03

Submit written comments to:

Cliff Weed
Washington State Department of Agriculture
PO Box 42560
Olympia, WA 98504-2560
FAX (360) 902-2093
By (date): 3/26/03, 5:00 pm

DATE OF INTENDED ADOPTION: 4/8/03

CODE REVISER USE ONLY

(j) Short explanation of rule, its purpose, and anticipated effects:

The proposed language amends two sections of the current rule. First, the definition of temporary field storage in **WAC 16-229-010 (22) "Temporary field storage"** is amended. The proposal language will increase the allowable size of temporary field storage tanks used for storing soil fumigants from the current size of 2,500 to a maximum of 10,000 gallons. The current rule requirement that temporary storage tanks can't remain in one location for more than 14 consecutive days is not changed but new language is added requiring that temporary fumigant tanks must be chemically compatible with the material being stored.

Also, **WAC 16-229-200 Primary containment of bulk liquid pesticides -- Temporary field storage** is amended to require that bulk pesticide storage containers which contain soil fumigants used for temporary field storage must have attached in a weatherproof enclosure, a recorded log of the date and time of each inspection.

Changing the current rule to allow larger temporary field storage tanks of up to 10,000 gallons will increase product storage and delivery safety for the following reasons:

(1) Spills are most likely to occur during the transfer of product from trucks into temporary field storage tanks. It is less hazardous to have an operator empty a 5,000-gallon tank truck into a field storage tank that can hold at least that capacity rather than into a tank that can hold only a portion of that capacity thus requiring iterations of the transfer process to fill the containers.

(2) Larger tank capacity will reduce the number of delivery road miles of soil fumigants. Without this increase in tank size, field storage dealers will be forced to make multiple trips to and from the tanks, increasing exposure of trucks and drivers to delivery accidents.

There are already numerous 10,000-gallon temporary field storage tanks being used to store soil fumigants resulting in non-compliance with a rule that, from a storage standpoint, is technologically outdated. Growers, applicators, transporters of soil fumigants will all be positively impacted by the proposed rules.

Requiring a record log to be attached to the container will give field inspectors a better idea of when the container was inspected. This record log will also provide the owner of the tank a history of the tank and the overall condition of the tank, thereby preventing the likelihood of tank failure.

Does proposal change existing rules? ☒ YES ☐ NO If yes, describe changes:
See above for a description of changes.

(k) Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by writing to:

telephoning: ()

faxing: ()

☒ No. Explain why no statement was prepared

RCW 19.85.030(1)(a) requires that an agency prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor costs on businesses in an industry. The department concludes that the proposed rule amendments will not impose a more than minor cost on the regulated industry for the following reasons:

- The proposed amendments do not require that larger temporary storage tanks be used; rather they give the flexibility to do so if needed by updating the current rule to reflect storage capacity trends in the industry.
- The proposed amendment requiring that tanks must be compatible with the material being stored in them already appears in other sections of the current rule, therefore, this added language does not impose any additional cost on the regulated community. The proposed amendment simply makes the amended sections compatible with the rest of the rule.
- The fourteen-day requirement is also a part of the current rule and, therefore, does not impose any additional costs on the regulated industry. Again, the proposed amendment simply makes the amended sections compatible with the rest of the rule.
- Finally, the department concludes that the proposed new requirement to keep, in a weatherproof enclosure, a recorded log of the date and time of each inspection does not impose a more than minor cost on the regulated industry. Current rule requires that temporary field storage containers must be checked on a daily basis for leakage and soundness when in use. Since site visits must already occur, the department does not believe that simply keeping an on-site record of that visit in a weatherproof enclosure constitutes a more than a minor cost. The department believes that such a record helps verify required daily inspections and, therefore, helps insure safe use of temporary storage tanks.

For the above reasons, the department does not believe that the proposed amendments impose a more than a minor cost on business and a Small Business Economic Statement is not required.

(l) Does RCW 34.05.328 apply to this rule adoption? ☐ Yes ☒ No

Please explain: The Washington State Department of Agriculture is not a listed agency in RCW 34.05(5)(a)(i).

SUMMARY:

The current rule limits the size of pesticide temporary field storage containers to 2,500 gallons. This limitation has become a concern of applicators and growers who are using soil fumigants. Soil fumigants are often used at rates of 15 to 25 gallons per acre and higher. A large percentage of soil fumigant users grow upwards of 400 acres of crops often on the same farm. Given the rate per acre and the number of acres to be treated, the current tank size is inadequate causing the temporary field storage tanks to be filled several times and increasing the chances of accidental spills. Increasing the size of temporary field storage containers will also allow more efficient deliveries by the tanker trucks that deliver the product because the capacity of full tanker truckloads is usually 4,800 to 5000 gallons. Changing the current rule to allow larger temporary field storage tanks of up to 10,000 gallons will increase product storage and delivery safety for the following reasons.

(1) Spills are most likely to occur during the transfer of product from trucks into temporary field storage tanks. It is less hazardous to have an operator empty a 5,000-gallon tank truck into a field storage tank that can hold at least that capacity rather than into a tank that can hold only a portion of that capacity thus requiring iterations of the transfer process to fill the containers.

(2) Larger tank capacity will reduce the number of delivery road miles of soil fumigants and lessen the risk associated with driving. Without this increase in tank size field storage dealers will be forced to make multiple trips to and from the tanks, increasing exposure of trucks and drivers to delivery accidents.